

3.2.02 | MOTIONS FOR BAIL PENDING APPEAL

- **Prior to Judgment of Conviction**

A criminal defendant may be released in accordance with the conditions set by the district court prior to judgment. If the district court refuses to release the prisoner, or sets conditions for release that cannot be met, the order is appealable as a matter of right and will be given prompt consideration by the court of appeals. The appeal is presented without the necessity of briefs or a record upon such papers, affidavits and portions of the record as the parties shall present. Counsel should promptly submit memoranda in support of their position on appeal, and the appeal is usually decided without oral argument upon the materials presented by the parties. Fed. R. App. P. 9(a); Loc. R. 9(a).

- **After Conviction and Notice of Appeal**

Application to set bail or for reduction of bail pending appeal must be made first to the district court. After action by the district court, the appellant may, if an appeal has been taken from the conviction, file a motion for release, or for a modification of the conditions of release, in the court of appeals without noting an additional appeal. A copy of the district court statement of reasons and the judgment of conviction must accompany the motion. Fed. R. App. P. 9(b); Loc. R. 9(b).

- **Bail Appeal**

The government may file an appeal from the district judge's order concerning release pending appeal. 18 U.S.C. § 3145. The appellant may also challenge the trial judge's order by a separate appeal under this statute. The appellant should not pursue both remedies -- a Rule 9(b) motion and a § 3145 appeal. The court encourages use of the Rule 9(b) motion.

(4th Circuit Court of Appeals // December 2023)

